

REMARKS

Entry of the foregoing and reconsideration of the application identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.114 and in light of the remarks which follow, are respectfully requested.

At the outset, Applicants' and Applicants' representatives wish to sincerely thank Examiner Henson and Examiner West of the U.S. Patent and Trademark Office for their time and consideration in participating in an interview on December 11, 2009. The Interview Summary accurately reflects the positions taken by the Examiners during the interview.

By the above amendments, claims 18 and 27 have been canceled without prejudice or disclaimer. The claims have been amended for readability and/or clarification purposes. New claim 28 is directed to subject matter deleted from claim 1. New claims 29-35 are directed to additional exemplary aspects of a method for determining a parameter of a sample using a measurement device. Applicants submit that the above claim amendments are supported by the originally filed disclosure, and no new matter is being introduced by such amendments.

In the Official Action, claims 1-10 and 17-20 stand rejected under 35 U.S.C. §101. Without addressing the propriety of this rejection, and in an effort to expedite prosecution, Applicants note that independent claim 1 has been amended to recite a method for an automatic determination of a physical, technical method and/or colloidal chemistry parameter "using a measurement device". In view of such recitation, it is clear that such method is not merely directed to laws of nature, natural phenomena or abstract ideas. Such claim is fully compliant with the provisions of 35

U.S.C. §101. Accordingly, withdrawal of the above rejection is respectfully requested.

Claims 1-10, 19 and 20 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. This rejection is moot in view of the above amendments and the amendments set forth in the Amendment Under 37 C.F.R. §1.114 filed on November 10, 2009. Accordingly, for at least the above reasons, withdrawal of the above rejection is respectfully requested.

Claims 1, 2, 4, 11 and 15-19 stand rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 5,095,451 (*Allen*). Claim 7 stands rejected under 35 U.S.C. §103(a) as being obvious over *Allen* in view of U.S. Patent No. 4,975,578 (*Tomimasu et al*). Claim 10 stands rejected under 35 U.S.C. §103(a) as being obvious over *Allen* in view of U.S. Patent Application Publication No. 2002/0147563 (*Lerche et al*). Claim 12 stands rejected under 35 U.S.C. §103(a) as being obvious over *Allen* in view of *Lerche et al* and U.S. Patent No. 3,344,702 (*Wood et al*). Withdrawal of these rejections is respectfully requested for at least the following reasons.

Allen does not disclose or suggest each feature recited in independent claim 1. For example, *Allen* does not disclose or suggest a method comprising, during the segregation, repeatedly determining and recording momentary transmission values $I_T(t, r)$ and/or scattering values $I_S(t, r)$ characterizing a current segregation status of the sample using waves radiated with intensity values $I_o(t, r)$ as a function of a position r within the sample at a time t , for one or more wavelengths over at least a partial section of the sample, simultaneously for multiple positions r , as now recited in claim 1. In this regard, in accordance with the Examiner's suggestion, claim 1 has

been amended to explicitly recite repeatedly determining and recording momentary transmission values $I_T(t, r)$ and/or scattering values $I_S(t, r)$, simultaneously for multiple positions r . *Allen* has no disclosure or suggestion of such feature.

As discussed during the interview, *Allen* discloses passing a beam of radiation from a radiation source through said suspension while moving said radiation source and an associated radiation detector for receiving said beam in a radial direction with respect to said chamber, said radiation source and radiation detector being positioned on opposite sides of said chamber. See col. 3, lines 45-53. *Allen* simply has no disclosure or suggestion of repeatedly determining and recording momentary transmission values $I_T(t, r)$ and/or scattering values $I_S(t, r)$, **simultaneously for multiple positions r** , as recited in claim 1. Upon consideration of the description of the *Allen* apparatus, the ordinarily skilled artisan would have recognized that *Allen* is not concerned at all with attaining such simultaneous determination for multiple positions r .

In fact, in view of *Allen*'s teaching at col. 6, lines 37-38, that measurement precision is adversely affected as beam width increases, it would not have been obvious to the ordinarily skilled artisan to modify *Allen* to arrive at the claimed simultaneous determining **for multiple positions r** . The ordinarily skilled artisan would have recognized that by such disclosure, *Allen* is merely concerned with optimizing measurement precision and accuracy, and that there is simply no recognition or suggestion of modifying the *Allen* apparatus to accommodate simultaneous determination for multiple positions r .

Independent claim 11, which recites a device for an automatic determination of a physical, technical method and/or colloidal chemistry parameter, is also

distinguishable from *Allen*. For example, *Allen* does not disclose or suggest a spectrometric measurement device with a source producing monochromatic parallel radiation, which measures radiation intensity scattered or transmitted by a dispersion sample over a partial or entire length of the sample, **simultaneously for multiple positions of the sample**, as recited in claim 1. Furthermore, *Allen* does not disclose or suggest, during segregation of the sample, detecting transmission values $I_T(t, r)$ and/or scattering values $I_S(t, r)$ of the sample, **simultaneously for multiple positions r** , as recited in independent claim 29.

The secondary applied documents (i.e., *Tomimasu et al*, *Lerche et al* and *Wood et al*) fail to cure the above-described deficiencies of *Allen*. In this regard, the Patent Office has relied on *Tomimasu et al* for disclosing means for determining mass density. See Official Action at page 10. *Lerche et al* has been relied on for disclosing the use of a database. See Official Action at page 11. *Wood et al* has been relied on for disclosing a cuvette positioning device with a plurality of cuvettes wherein the positioning can be programmed, and a detecting device. See Official Action at page 12. Quite clearly, even if the secondary applied documents would have been combined with *Allen* in the manner suggested by the Patent Office, the resulting combination nevertheless fails to cure the above-described deficiencies of *Allen* with respect to independent claims 1, 11 and 29.

For at least the above reasons, it is apparent that the claims are non-obvious over the applied documents. Accordingly, withdrawal of the §103(a) rejections is respectfully requested.

The dependent claims are allowable at least by virtue of their direct or indirect dependence from one of the independent claims. Thus, a detailed discussion of the

additional distinguishing features recited in the dependent claims is not set forth at this time.

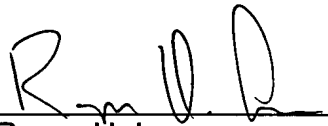
From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order, and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

Date: December 17, 2009

By:



Roger H. Lee
Registration No. 46317

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620